

PROFESSIONAL SERVICES AGREEMENT

Bremerton Gasworks & Sesko Properties Petroleum Assessment & Restoration Planning GeoEngineers, Inc.

The City of Bremerton ("City") and GeoEngineers, Inc. ("Consultant"), referred to collectively as the "Parties," enter into the following Agreement for professional services:

I. Scope: The Consultant agrees to perform the services more specifically described in Amendment No. 2 Scope of Services, Exhibit A, which is incorporated by reference herein. The Scope of Services may be modified only pursuant to Section VII.G. of this Agreement. If the Scope of Services provides for unspecified additional services such services shall only be performed upon the express written request of the City. Consultant further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices in effect at the time such services are performed.

II. Term: The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed as provided for in the work schedule attached hereto as Exhibit B; provided however, that additional time shall be granted by the City for excusable delays or extra work as provided for in section IX (A) of this agreement.

III. Compensation: In consideration of the services provided pursuant to this Agreement, the City shall pay Consultant in the amount not to exceed \$181,500 as described further in Exhibit B, Amendment No.2. Consultant's charges and bills shall conform to the fee schedule attached hereto as Exhibit B, Amendment No. 2 and incorporated herein by this reference. The City shall pay within thirty (30) days of receipt of invoice.

The Consultant shall submit regular billing statements detailing work performed and amount charged on each task or portion thereof. The descriptions shall conform to and fall within the categories set out in the Scope of Services. Upon receipt of a conforming billing statement, the City shall promptly process payment. PROVIDED, HOWEVER, the City reserves the right to prioritize scoped work and accelerate and/or delay work tasks under the time frame set forth in Section II herein. The Consultant's labor rates and billing fees shall be as delineated in Exhibit C.

Consultant shall not perform work beyond the Scope of Services, nor shall be compensated for such work, unless the Scope of Services or amount of compensation is modified pursuant to this Agreement. Consultant shall only be compensated for additional services if requested pursuant to Section I and, if not otherwise provided, such compensation shall be in accordance with Exhibit C.

If a billing statement does not conform to this Agreement, the City may withhold payment until the statement is brought into compliance. Such withholding does not relieve Consultant of its obligations under this Agreement.

IV. Relationship of Parties: Consultant represents that it is skilled in the matters addressed in the Scope of Services and is performing independent functions and responsibilities within its field of expertise. Consultant and its personnel are independent Consultants and not employees of the City. Consultant and its personnel have no authority to bind the City or to control the City's employees and other Consultants. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-Consultants of the Consultant. Consultant will be solely and entirely responsible for its acts and for the acts of Consultant's agents, employees, representatives and sub-Consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent Consultants to perform the same or similar work.

As an independent Consultant, Consultant is responsible for its own management. The City's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over Consultant or its personnel.

As an independent Consultant, Consultant is responsible for payment of all taxes and licensing fees necessary to perform its obligations under this Agreement. These taxes and fees include but are not limited to State industrial insurance, Business & Occupation, State professional licensing, and City business licensing. If any taxes or fees due the City have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due Consultant.

V. Indemnification: Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, caused by or resulting from the negligent acts, errors, or omissions of Consultant in the performance of this Agreement, except for that portion of the injuries and damages caused by the City's negligence.

The City's review or acceptance of any of the work when completed shall not be grounds to avoid any of these covenants of indemnification.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

VI. Insurance: The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. **Automobile Liability** insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
2. **Commercial General Liability** insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and
3. **Excess Liability** insurance with limits not less than 1,000,000 limit per occurrence and aggregate.
4. **Professional Liability** insurance with limits no less than \$1,000,000 limit per occurrence/claim.

Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant.

All required policies shall be provided on an "occurrence" basis except professional liability insurance (if required), which may be provided on a "claims-made" basis.

The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of an endorsement that is acceptable to the City, which names the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies and endorsements. The City further reserves the right to reject any unacceptable policies and/or endorsements.

The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The Consultant's insurance shall be primary insurance as respects the City and the City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

The City also reserves its unqualified right to require at any time and for any reason, proof of coverage in the form of a duplicate of the insurance policy with all endorsements as evidence of coverage.

VII. General Conditions:

A. Reports and Information: When requested by the City, Consultant shall furnish periodic reports and documents on matters covered by this Agreement. The reports and documents shall be furnished in the time and form requested. Consultant shall maintain accounting records in accordance with Generally Accepted Accounting Principles (GAAP) to substantiate all billed amounts.

B. Ownership and Use of Records and Documents: Original documents, drawings, designs and reports, including those in electronic format, developed under this Agreement are the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such

information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

All data, documents and files created by Consultant under this Agreement may be stored at Consultant's office in Seattle, Washington. Consultant shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying and updating as necessary until such time as the City is capable of storing such information in the City's offices. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Consultant pursuant to this Agreement, are instruments of service with respect to the project and are the property of the City. Any reuse by the City for other than the specific purpose intended will be at City's sole risk.

C. Work Performed at Consultant's Risk: Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, and agents, in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

D. Place of Work: The Consultant shall perform the work authorized under this Agreement at its offices in Seattle, Washington. Meetings with the City staff as described in Exhibit A, Scope of Services, shall take place at the City's offices, or at locations mutually agreed upon by the parties.

E. Entire Agreement: This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

F. Severability: Should any part of this Agreement be found void, the balance of the Agreement shall remain in full force and effect.

G. Modification: This Agreement may only be modified by written instrument signed by both Parties.

H. Written Notices: All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

City Address:

City of Bremerton, P.W. & Utils.
3027 Olympus Drive
Bremerton WA 98310

Consultant Address:

GeoEngineers, Inc.
600 Stewart Street, Suite 1700
Seattle WA 98101

I. Waiver: Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

J. Non-Waiver of Breach: The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

K. Compliance with Laws: Consultant shall comply with all applicable Federal, State, and local laws in performing its obligations under this Agreement.

L. Choice of Law and Venue: This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court.

M. Attorneys' Fees: In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees.

N. Assignment: Any assignment of this agreement by the Contractor without the written consent of the City shall be void.

VIII. Nondiscrimination: Consultant shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, or disability, except for employment actions based on bona fide occupational qualification.

IX. Termination: This Agreement shall remain in force until completion and acceptance of the services, terminated by written instrument upon mutual consent, or by the City of Bremerton for convenience. This Agreement may be immediately terminated for cause by a Party if the other Party substantially fails to perform through no fault of the terminating Party, and the non-performing Party does not commence correction of the failure of performance within thirty (30) days of the terminating Party's sending notice to the non-performing Party. Any Notice by Consultant shall include a report showing the status of all items listed in the Scope of Services current through the termination date.

If the City receives reimbursement by any federal, state, or other source for work described in Section I herein, and that funding is withdrawn, reduced or limited in any way, or the project is cancelled or substantially reduced after the execution date of this Agreement and prior to the completion of the work, the City may summarily terminate this Agreement.

A. Excusable Delays: The right of Consultant to proceed shall not be terminated nor shall Consultant be charged with liquidated damages for any delays in the completion of the work due to: 1) any acts of the federal government in controlling, restricting, or requisitioning materials, equipment, tools, or labor by reason of war, national defense, or other national emergency; 2) any acts of the City, its

consultants, or other public agencies causing such delay; and 3) causes not reasonably foreseeable by the parties at the time of the execution of the Agreement that are beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, fires, floods, strikes, or weather of unusual severity. PROVIDED, HOWEVER, that the Consultant must promptly notify the City within ten (10) calendar days in writing of the cause of the delay. If, on the basis of the facts and the terms of this Agreement, the delay is properly excusable, the City shall, in writing, extend the time for completing the work for a period of time commensurate with the period of excusable delay.

B. Rights Upon Termination: In the event of termination, the City shall pay for all services performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project which may be used by the City without restriction. Any such use not related to the project which Consultant was contracted to perform shall be without liability or legal exposure to the Consultant.

CITY OF BREMERTON

GEOENGINEERS, INC.

By:_____

By:_____

its:_____

its:_____

Date:_____

Date:_____

Approved as to form:

Attest:

Bremerton City Attorney

City Clerk

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